



IRA A. JACKSON  
COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
*Leverett Saltonstall Building*  
*100 Cambridge Street, Boston 02204*

December 19, 1983

You represent a woman who plans to transfer a house to her children. You inquire as to what the Massachusetts tax consequences will be at the time of the transfer.

Massachusetts gross income is federal gross income with certain modifications. (G.L. c. 62, §§ 1, 2). Since Massachusetts has no provisions which modify the rules for determining the basis of real property under Section 1015 of the Code, the Massachusetts basis of the property will be the same as the federal basis. Under Section 1015 of the Internal Revenue Code ("Code"), the basis of property acquired by gift depends on the purpose for which it is computed. For determining gain, the donee's basis is the same as the donor's adjusted basis. For determining loss, the donee's basis is the lower of the donor's basis or the fair market value of the property when the gift was made. Section 1015(d) of the Code provides that the donee's basis determined in the above manner may be increased by all or a portion of the federal gift tax paid on the gift.

Under Section 102 of the Code, property received as a gift is not includible in gross income, although any income from such property is includible in gross income.

Because Massachusetts has not enacted a gift tax, the lifetime transfer of property without consideration is not a taxable event.

Based on the foregoing, and assuming the taxpayer receives no consideration for the transfer, it is ruled that:

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1. For Massachusetts income tax purposes, where a parent gratuitously transfers a house to her children, the gift of the real estate will not result in the recognition of income to the parent.

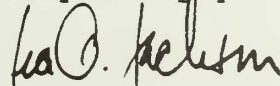
2. For Massachusetts income tax purposes, where a parent gratuitously transfers a house to her children, in determining gain or loss upon a subsequent sale, the basis of the property in the hands of the children is the federal adjusted basis of such property.

You also inquire whether, for Massachusetts estate tax purposes, any portion of the value of the real estate will be includible in the parent's gross estate.

Any transfers made by a decedent during his life, other than bona fide sales for an adequate and full consideration in money or money's worth may be subject to Massachusetts estate tax. The Massachusetts gross estate is the federal gross estate determined on the basis of the Code as amended and in effect on January 1, 1975. (G.L. c. 65C, § 1).

Under Section 2035 of the Code a decedent's gross estate includes as a transfer in contemplation of death the value of any interest in property transferred within three years before the decedent's death, unless the transfer is shown not to have been made in contemplation of death. Additionally, under Section 2036 of the Code a decedent's gross estate includes the value of any interest in property transferred by the decedent whereby the decedent retained the possession or enjoyment of, or the right to the income from the transferred property.

Very truly yours,



Commissioner of Revenue

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